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**(1995) 05 SHI CK 0012**  
**In the High Court Of Himachal Pradesh**  
**Case No : CWP No. 454 of 1994**

Ranbir Singh Saini

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 17-05-1995

**Acts Referred:**

Constitution of India, 1950 — Article 311, 311(2)

**Citation :** (1995) 2 ILR HP 1005

**Hon'ble Judges :** S.N. Phukan, C.J; Bhawani Singh, J

**Bench :** Division Bench

**Advocate :** Shubh Mahajan, for the Appellant; P.A. Sharma, Sr. Central Government Standing Counsel, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Bhawani Singh, J.—Through this petition the Petitioner has challenged the order dated April 6, 1994 (Annexure-PF) whereby his services have been terminated by Respondent-3.

2. The Petitioner has stated that he was appointed on probation for a period of one year by appointment order dated April 10, 1992 (Annexure-PA). The probation period was extended for one year vide letter dated April 24, 1993 (Annexure-PB). It has also been stated that his period of probation was extended since Respondent-3 wanted to adjust his own man against this assignment. In order to achieve this object, he recorded certain remarks against the Petitioner desiring improvement in the performance of his duties. These remarks are contained in the order extending the probation period of the Petitioner (Annexure-PB). Thereafter, show cause notice was also issued to him explaining why the Petitioner was not signing the Attendance Register regularly and by scheduled time and that on January 22, 1994, the Petitioner again failed to sign the Attendance Register till the end of the closing hours. He was administered warning also vide order dated January 25, 1994 (Annexure-PD). Consequently, his services were terminated by order of April 6, 1994 (Annexure-PF). According

to the Petitioner, this order is mala fide, arbitrary, capricious and unconstitutional. Before terminating the services of the Petitioner, no enquiry was held, therefore, the order is by way of punishment and is liable to be set aside.

3. The Respondents have filed reply-affidavit in this case. It has been stated, inter alia, that the Petitioner was employed as Hostel Superintendent on probation for a period of one year which was extendable upto two years at the discretion of Respondent-3. The Petitioner was afforded opportunity to demonstrate his suitability to the post held by him. That is why, he was asked to improve his work and conduct so that he could come up to the standard expected from a Hostel Superintendent. Since there was no improvement during the first period of probation, it was extended by one year. It was desired that the Petitioner should make improvement in the performance of his duties. The Petitioner did not improve, therefore, his services were terminated. It has been denied that the Petitioner was thrown out for accommodating some-one known to the Principal-Respondent-3.

4. Through the affidavit of February 26, 1994, the Petitioner has denied the case of the Respondents. Among other things, he has stated that the order terminating his services is not a simple order of termination. The real foundation of the action taken by Respondent-3 is based on misconduct or inefficiency on the part of the Petitioner, therefore, the order is punitive. Holding of enquiry and affording of opportunity to the Petitioner was necessary in these circumstances. Many other facts have also been pointed out to assail the termination order.

5. During the course of arguments, learned Counsel for the Petitioner concentrated her submissions to the question whether the impugned order of termination has been passed by way of punishment necessitating holding of enquiry and giving of opportunity to the Petitioner to defend himself. Learned Counsel placed reliance on two decisions of apex Court, namely Anoop Jaiswal Vs. Government of India and Another, ; and Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another,

6. The facts in the first case are entirely different, therefore, this case is not helpful to the Petitioner. Similarly, the second case is against the point canvassed by the Petitioner.

7. It is undeniable that the Petitioner was on probation when his services were terminated. Perusal of the impugned order points out that it does not refer to any kind of misconduct on the part of the Petitioner. It is a simple order of termination and it does not cast a stigma on the Petitioner. It is well settled that a probationer has no right to the post and his services can be terminated during this period provided the order of termination does not visit him with stigma.

8. In Parshotam Lal Dhingra Vs. Union of India (UOI), Das. C.J. speaking for the majority, made the following observations:

But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary, either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment.... To put it in another way, if the government has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by contract or the rules, is prima facie and per se, not a punishment and does not attract the provisions of Article 311.

9. In *Ram Gopal Chaturvedi Vs. State of Madhya Pradesh*, the Supreme Court refused to interfere with an order of termination of an officer who had been temporarily appointed to the judicial service of Madhya Pradesh, without passing any stigma on the officer concerned and merely stating that his services were terminated from a specified date. Even though the order of termination had been preceded by an informal inquiry into the conduct of the officer with a view to ascertain if he should be retained in the service. The apex Court confirmed the view taken in *State of Punjab v. Sukh Raj Bahadur* (AIR 1963 SC 1089) and observed:

On the face of it the order did not cast any stigma on the Appellant's character or integrity nor did it visit him with any evil consequences. It was not passed by way of punishment and the provisions of Article 311 were not attracted.

10. In *Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali*, the Supreme Court enunciated and reiterated the principle that:

Even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the authority to terminate the service of the employee on probation, such termination cannot be termed as penalty or punishment.

11. In *State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, K.N. Singh, J.* (as he then was) examined large number of cases on this point and said in para 7 that:

7. A temporary government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary government servants. A temporary government servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If it decides to take, punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in

accordance with the provisions of Article 311 of the Constitution. Since, a temporary government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent government servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well settled that the form of the order is not conclusive and it is open to the court to determine the true nature of the order. In *Parshotam Lal Dhingra v. Union of India*, a Constitution Bench of this Court held that the mere use of expressions like "terminate" or "discharge" is not conclusive and in spite of the use of such expressions, the court may determine the true nature of the order to ascertain whether the action taken against the government servant is punitive in nature. The court further held "that in determining the true nature of the order the court should apply two tests namely; (1) whether the temporary government servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary government servant is by way of punishment. It must be borne in mind that a temporary government servant has no right to hold the post and termination of such a government servant does not visit him with any evil consequences. The evil consequences as held in *Parshotam Lal Dhingra* case do not include the termination of services of a temporary government servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in *Dhingra* case has been reiterated and affirmed by the Constitution Bench decisions of this Court in *State of Orissa v. Ram Narayan Dass* ; *R.C. Lacy v. State of Bihar* ; *Champaklal Chimanlal Shah v. Union of India* ; *Jagdish Mitter v. Union of India*; *A.C. Benjamin v. Union of India* ; *Shamsher Singh v. State of Punjab*. These decisions have been discussed and followed by a three Judge Bench in *State of Punjab v. Sukh Raj Bahadur*.

Motive behind the order is irrelevant when termination is not by way of punishment. (See *R.K. Gupta v. State of U.P.* (1977 (2) S.L.R. 78 .

12. Turning to the facts of the case, the third Respondent has taken into consideration the over all performance of the Petitioner for judging his suitability for continuance in service. Simply because certain defects have been pointed out in some of the communications, it cannot be derived from there that the order of termination is by way of punishment. These deficiencies are to be noticed when general assessment of the suitability is under consideration of the authority. They cannot be taken to be the foundation for making the ultimate order suffer from vice of punishment or stigma requiring holding of enquiry and affording of opportunity to the person preceding the termination order.

13. No other point was urged.

14. After giving serious and sympathetic consideration to the whole matter, we are of the opinion that the Petitioner is not entitled to the reliefs sought by him through this writ petition. Consequently, we proceed to dismiss this petition

leaving the parties to bear their own costs.